

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE ENROLLED ACT No. 1193

AN ACT to amend the Indiana Code concerning employee benefits.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-3.5-5-11 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:** **Sec. 11. Before January 1, 2002, the PERF board shall adopt rules establishing procedures for making loans to a participant from the participant's employee contribution account and employer contribution account within the defined contribution fund. Rules adopted under this section must comply with the requirements of Section 72(p) of the Internal Revenue Code and must apply to each participant in the plan, regardless of whether the participant is serving in the general assembly at the time of the loan. A loan made in accordance with rules adopted under this section is not considered the receipt of retirement benefits for purposes of IC 5-10-8-1.**

SECTION 2. IC 5-10-1.1-1.5, AS ADDED BY P.L.273-1999, SECTION 231, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 1.5. (a) The state, through the budget agency, may adopt a defined contribution plan, under Section 401(a) of the Internal Revenue Code, for the purpose of matching all or a specified portion of state employees' contributions to the state employees' deferred compensation plan and for any additional purposes established by statute.**

(b) The deferred compensation committee shall be the trustee of a



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plan established under subsection (a) as described in section 4 of this chapter. A plan established under subsection (a) shall be administered by the auditor of state as described in section 5 of this chapter.

(c) The deferred compensation committee may approve funding offerings for a plan established under subsection (a), which may be the same as offerings for the state employees' deferred compensation plan. All funds in each plan shall be separately accounted for but may be commingled for investment purposes.

(d) Contributions to a plan established under subsection (a) are limited to the amount of biennial appropriations ~~made for that purpose.~~ **the budget agency determines are available for any such purposes. The deferred compensation committee may use funds available under the plan to hire or contract with qualified attorneys, financial advisers, or other professional or administrative persons that the committee believes are necessary or useful in the administration of the plan.**

(e) A plan established under subsection (a) must include appropriate provisions concerning the plan's day to day operation and any other provisions that are appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, online activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

(f) The state is obligated at any particular time only for the current market value of the funding previously made to a plan established under subsection (a).

(g) The state board of finance shall extend the plan established under subsection (a) to any political subdivision that also elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) of this chapter.

SECTION 3. IC 5-10-1.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The deferred compensation committee is established. The committee consists of five (5) persons appointed by the state board of finance as follows:

- (1) Each member of the state board of finance shall appoint one (1) member to the committee.
- (2) The remaining two (2) members:
 - (A) must be participants in the state employees' deferred compensation plan;
 - (B) may not be employees of the members of the state board of finance; ~~and~~



- (C) must be from different political parties; **and**
(D) may not serve for more than two (2) consecutive three
(3) year terms.

(b) The deferred compensation committee may annually elect a chairperson and a secretary.

(c) The deferred compensation committee may approve proposed ~~funding offerings~~ **investment products** for the state employees' deferred compensation plan.

~~(c)~~ **(d)** All amounts deferred under the state employees' deferred compensation plan must be put into a trust for the exclusive benefit of plan participants, as required by Section 457(g) of the Internal Revenue Code. The deferred compensation committee is the trustee of the trust.

~~(d)~~ **(e)** The plan shall include appropriate provisions pertaining to its day to day operation providing for methods of electing to defer income, methods of changing the amount of income to be deferred, and such other provisions as may be appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, on-line activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

~~(e)~~ **(f)** The plan shall provide for the preparation and distribution, from time to time to all eligible employees, of pamphlets describing the plan and outlining the opportunities available to employees under the plan.

~~(f)~~ **(g)** The state board of finance shall extend the plan to any political subdivision which elects to utilize the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) of this chapter.

~~(g)~~ **(h)** At least annually, the deferred compensation committee shall report to the state board of finance on the status of the state employees' deferred compensation plan, including any changes to the plan.

SECTION 4. IC 5-10-1.1-7.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7.3. (a) Any political subdivision (as defined in IC 36-1-2-13) that elects to use the state employees' deferred compensation plan for its employees as authorized in section 7(b)(2) of this chapter also may elect to participate in the state's defined contribution plan established by section 1.5 of this chapter for the purpose of matching all or a specified portion of the political subdivision's employees' contributions to the deferred compensation plan.**



(b) Participation in the state's defined contribution plan described in subsection (a) shall be authorized by the governing body of the political subdivision, which in the case of a unit subject to IC 36-1-3 shall be done by ordinance.

(c) Contributions by a political subdivision to the state's defined contribution plan described in subsection (a) for the purpose of matching all or a specified portion of employee contributions are limited to the amount of appropriations made each year for that purpose.

(d) The political subdivision is obligated at any particular time only for the current market value of the funding previously made to the state's defined contribution plan described in subsection (a).

(e) This section does not limit the power or authority of any political subdivision to establish and administer any other plans considered appropriate by the governing body of the political subdivision, including plans established under section 1(2) of this chapter.

SECTION 5. IC 5-10-1.1-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7.5. (a) As used in this section, "state agency" means the following:

- (1) An authority, a board, a branch, a commission, a committee, a department, a division, or other instrumentality of state government.
- (2) A separate corporate body politic that adopts the plan described in subsection (b).
- (3) State elected officials and their office staff.
- (4) The legislative services agency.
- (5) Legislative staff eligible to participate in the state employees' deferred compensation plan established by section 1 of this chapter.

However, the term does not include a state educational institution (as defined in IC 20-12-0.5-1) or a political subdivision.

(b) The deferred compensation committee shall adopt provisions in a defined contribution plan, under Sections 401(a) and 414(d) of the Internal Revenue Code, for the purpose of converting unused excess accrued leave to a monetary contribution for employees of a state agency. These provisions may be part of the plan and trust established under section 1.5(a) of this chapter.

(c) The deferred compensation committee is the trustee of the plan described in subsection (b). The plan must be a qualified plan, as determined by the Internal Revenue Service.



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(d) The state personnel department shall adopt rules under IC 4-22-2 that it considers appropriate or necessary to implement this section. The rules adopted by the state personnel department under this section must:

- (1) be consistent with the plan described in subsection (b);
- (2) include provisions concerning:
 - (A) the type and amount of leave that may be converted to a monetary contribution;
 - (B) the conversion formula for valuing any leave that is converted;
 - (C) the manner of employee selection of leave conversion; and
 - (D) the vesting schedule for any leave that is converted; and
- (3) apply to all state agencies.

(e) The rules adopted by the state personnel department under subsection (d) specifying the conversion formula must provide for a conversion rate under which the amount contributed on behalf of a participating employee for a day of leave that is converted under this section is equal to at least sixty percent (60%) of the employee's daily pay as of the date the leave is converted.

(f) The deferred compensation committee may adopt the following:

- (1) Plan provisions governing:
 - (A) the investment of accounts in the plan; and
 - (B) the accounting for converted leave.
- (2) Any other plan provisions that are necessary or appropriate for operation of the plan.

(g) The plan described in subsection (b) may be implemented only if the deferred compensation committee has received from the Internal Revenue Service any rulings or determination letters that the committee considers necessary or appropriate.

SECTION 6. IC 5-10-8-8.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8.4. Except as provided by an enactment of the general assembly, an election by an employer under:

- (1) section 8(f) of this chapter concerning the payment of a retired employee's premium; or
- (2) section 8(j) of this chapter concerning Medicare coverage and program eligibility;

may not be revoked or altered at any time by the employer or a subsequent employer to the detriment of a person entitled to

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benefits under section 8.2 of this chapter.

SECTION 7. IC 5-10-12-3, AS ADDED BY P.L.195-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) Subject to ~~subsection~~ **subsections (b) and (c)**, an employee who:

- (1) has at least ten (10) years of creditable service with a state agency;
- (2) retires after June 30, 2000; and
- (3) has accrued and unused sick days, vacation days, or personal days on the employee's retirement date;

is entitled to have the amounts specified in section 5 of this chapter deposited by the state into a cafeteria plan under Section 125 of the Internal Revenue Code.

(b) The provisions of this chapter requiring the department to make deposits into a cafeteria plan on behalf of retired employees described in subsection (a) apply only if the department has received from the Internal Revenue Service any approvals or rulings that the department considers necessary or appropriate for the cafeteria plan.

(c) The provisions of this chapter requiring the department to make deposits into a cafeteria plan on behalf of retired employees described in subsection (a) do not apply if the plan described in IC 5-10-1.1-7.5(b) is implemented and the deferred compensation committee has received from the Internal Revenue Service any rulings or determination letters that the committee considers necessary or appropriate for the plan described in IC 5-10-1.1-7.5(b).

SECTION 8. IC 5-10.3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) A member who:

- (1) enters the United States armed services;
- (2) leaves his contributions in the fund;
- (3) except as provided in subsection (c), resumes service with his employer within one hundred twenty (120) days after his unconditional discharge; and
- (4) would be entitled to service credit for military service under the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.) if the member had resumed service with the member's employer within ninety (90) days after discharge;

is entitled to service credit for the armed service.

(b) A state employee who left employment before January 1, 1946, or an employee of a political subdivision who left employment before the participation date, to enter the United States armed services is

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entitled to service credit for the armed service if he:

(1) except as provided in subsection (c), resumes service with the employer within one hundred twenty (120) days after his unconditional discharge; and

(2) would be entitled to service credit for military service under the applicable requirements of federal law in effect at the time of reemployment if the employee had resumed service with the employee's employer within ninety (90) days after discharge.

(c) The board shall extend the one hundred twenty (120) day reemployment requirement contained in subsection (a)(3) or (b)(1) if the board determines that an illness, an injury, or a disability related to the member's military service prevented the member from resuming employment within one hundred twenty (120) days after the member's discharge from military service. However, the board may not extend the deadline beyond thirty (30) months after the member's discharge.

(d) If a member retires and the board subsequently determines that the member is entitled to additional service credit due to the extension of a deadline under subsection (c), the board shall recompute the member's benefit. However, the additional service credit may be used only in the computation of benefits to be paid after the date of the board's determination, and the member is not entitled to a recomputation of benefits received before the date of the board's determination.

(e) Notwithstanding any provision of this section, a member is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

(f) Subject to the provisions of this section, an active member may purchase not more than two (2) years of service credit for the member's service on active duty in the armed services if the member meets the following conditions:

(1) The member has at least one (1) year of credited service in the fund.

(2) The member serves on active duty in the armed services of the United States for at least six (6) months.

(3) The member receives an honorable discharge from the armed services.

(4) Before the member retires, the member makes contributions to the fund as follows:

(A) Contributions that are equal to the product of the following:

(i) The member's salary at the time the member actually

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makes a contribution for the service credit.

(ii) A rate, determined by the actuary of the fund, that is based on the age of the member at the time the member actually makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased.

(iii) The number of years of service credit the member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary of the fund, for the period from the member's initial membership in the fund to the date payment is made by the member.

However, a member is entitled to purchase service credit under this subsection only to the extent that service credit is not granted for that time under another provision of this section. At least ten (10) years of service in Indiana is required before a member may receive a benefit based on service credits purchased under this section. A member who terminates employment before satisfying the eligibility requirements necessary to receive a monthly allowance or receives a monthly allowance for the same service from another tax supported public employee retirement plan other than under the federal Social Security Act may withdraw the purchase amount plus accumulated interest after submitting a properly completed application for a refund to the fund.

(g) The following apply to the purchase of service credit under subsection (f):

(1) The board may allow a member to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) A member may not claim the service credit for purposes of determining eligibility or computing benefits unless the member has made all payments required for the purchase of the service credit.

SECTION 9. IC 21-6.1-4-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6.1. (a) This subsection applies to members who retire before July 1, 1980. A member who had completed four (4) years of approved college teacher training before

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voluntary or involuntary induction into the military services is entitled to credit for that service as if the member had begun teaching before the induction. A member who serves in military service is considered a teacher and is entitled to the benefits of the fund if for or during the leave of absence the member pays into the fund the member's contributions. Time served by a member in military service for the duration of the hostilities or for the length of active service in the hostilities and the necessary demobilization time after the hostilities is not subject to the one-seventh rule specified in section 5 of this chapter.

(b) This subsection applies to members who retire after June 30, 1980. A member who had completed four (4) years of approved college teacher training before voluntary or involuntary induction into military service is entitled to credit for the member's active military service as if the member had begun teaching before the induction. A member who serves in military service is considered a teacher and is entitled to the benefits of the fund if:

- (1) the member has an honorable discharge; and
- (2) except as provided in subsection (f), the member returns to active teaching service within eighteen (18) months after the completion of active military service.

The time served by a member in military service for the duration of the hostilities or for the length of active service in the hostilities and the necessary demobilization time after the hostilities is not subject to the one-seventh rule specified in section 5 of this chapter. However, not more than six (6) years of military service credit may be granted under this subsection. In order to be eligible for any military service credit under this subsection, a member must have at least ten (10) years of in-state service credit.

(c) This subsection applies to members who retire after May 1, 1989. A member who had begun but had not completed four (4) years of approved college teacher training before voluntary or involuntary induction into the military services is entitled to service credit in an amount equal to the duration of the member's active military service if the following conditions are met:

- (1) The member has an honorable discharge.
- (2) Except as provided in subsection (f), the member returns to a four (4) year approved college teacher training program within eighteen (18) months after the completion of active military service and subsequently completes that program.
- (3) The member has at least ten (10) years of in-state service credit.

(d) This subsection applies to members who retire after May 1,

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1991, and who are employed at state institutions of higher education. A member who had begun but had not completed baccalaureate or post-baccalaureate training before voluntary or involuntary induction into military service is entitled to the member's active military service credit for the member's active military service in an amount equal to the duration of the member's military service if the following conditions are met:

- (1) The member received an honorable discharge.
- (2) Except as provided in subsection (f), the member returns to baccalaureate or post-baccalaureate training within eighteen (18) months after completion of active military service and subsequently completes that training.
- (3) The member has at least ten (10) years of in-state service credit.

(e) The maximum amount of service credit that may be granted to a member who meets the conditions of subsection (c), or (d) is six (6) years. However, for purposes of subsection (c), or (d), the time served by the member in active military service for the length of active service in hostilities and necessary demobilization is not subject to the one-seventh rule specified in section 5 of this chapter.

(f) The board shall extend the eighteen (18) month deadline contained in subsection (b)(2), (c)(2), or (d)(2) if the board determines that an illness, an injury, or a disability related to the member's military service prevented the member from returning to active teaching service or to a teacher training program within eighteen (18) months after the member's discharge from military service. However, the board may not extend the deadline beyond thirty (30) months after the member's discharge.

(g) If a member retires, and the board subsequently determines that the member is entitled to additional service credit due to the extension of a deadline under subsection (f), the board shall recompute the member's benefit. However, the additional service credit may be used only in the computation of benefits to be paid after the date of the board's determination, and the member is not entitled to a recomputation of benefits received before the date of the board's determination.

(h) Notwithstanding any provision of this section, a member is entitled to military service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.), including all later amendments.

(i) Subject to the provisions of this section, an active member



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may purchase not more than two (2) years of service credit for the member's service on active duty in the armed services if the member meets the following conditions:

- (1) The member has at least one (1) year of credited service in the fund.
- (2) The member serves on active duty in the armed services of the United States for at least six (6) months.
- (3) The member receives an honorable discharge from the armed services.
- (4) Before the member retires, the member makes contributions to the fund as follows:

(A) Contributions that are equal to the product of the following:

- (i) The member's salary at the time the member actually makes a contribution for the service credit.
- (ii) A rate, determined by the actuary of the fund, that is based on the age of the member at the time the member actually makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased.
- (iii) The number of years of service credit the member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary of the fund, for the period from the member's initial membership in the fund to the date payment is made by the member.

However, a member is entitled to purchase service credit under this subsection only to the extent that service credit is not granted for that time under another provision of this section. At least ten (10) years of service in Indiana is required before a member may receive a benefit based on service credits purchased under this section. A member who terminates employment before satisfying the eligibility requirements necessary to receive a monthly allowance or receives a monthly allowance for the same service from another tax supported public employee retirement plan other than under the federal Social Security Act may withdraw the purchase amount plus accumulated interest after submitting a properly completed application for a refund to the fund.

(j) The following apply to the purchase of service credit under subsection (i):

- (1) The board may allow a member to make periodic



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payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) A member may not claim the service credit for purposes of determining eligibility or computing benefits unless the member has made all payments required for the purchase of the service credit.

SECTION 10. [EFFECTIVE JULY 1, 2001] IC 5-10.3-7-5 and IC 21-6.1-4-6.1, both as amended by this act, apply only to members of the public employees' retirement fund or the Indiana state teachers' retirement fund who retire after June 30, 2001.

SECTION 11. An emergency is declared for this act.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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